IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.441 of 2005

Decided on : November 21, 2006

Rajwant Singh and others **...Appellants.**

VERSUS

Smt. Brahmi Devi and others **...Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellants : **Mr. Ramakant Sharma, Advocate.**

For the Respondents : **Mr. K.D. Sood, Advocate, with Ms. Sunita Sharma, Advocate, for respondents No. 1 to 4.**

None for other respondents.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. A preliminary decree was passed for partition of 5 *Marlas* area, bearing Khasra No.1042, in a suit instituted by respondents No. 1 to 6. That decree was affirmed right up to the stage of the second appeal. Thereafter, respondents No. 1 to 6 applied for the passing of final decree, in terms of the preliminary decree. The trial Court appointed one Tehsildar, as Local Commissioner, to demarcate the area of Khasra No.1042, which was the subject matter of partition, and to submit a proposal regarding partition by metes and bounds, as per the shares of the parties declared in the preliminary decree. The Local Commissioner submitted his report and on the basis of that report trial Court

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Whether the reporters of the local papers may be allowed to see the Judgment?

passed the final decree. That decree was challenged by the present appellants-defendants by filing appeal in the court of District Judge. During the pendency of the appeal, the appellants-defendants made an application that the dimensions (*Karu Kaan*) of an adjoining Khasra number, i.e. Khasra No. 1039, had not been correctly noticed by the Local Commission and that after the submission of the report by the Local Commissioner and during the pendency of the appeal before the District Judge consolidation process had started in the revenue estate concerned and in the course of that process the Consolidation Authorities had corrected the dimensions (*Karu Kaans*) of the aforesaid Khasra number (1039). The appellants wanted to place on record the copy of the order of the Consolidation Officer correcting the *Karu Kaans* of said Khasra number, i.e. 1039. Reply to that application was filed by the respondents-plaintiffs. The Court ordered that the application would be disposed of at the time of the hearing of the appeal.

3. Now, the appeal has been disposed of by the learned District Judge (first Appellate Court) but the application for additional evidence that was moved by appellants-defendants, has not been decided.

4. The main contention raised by the learned counsel for the appellants-defendants is that on account of the Local Commissioner having not carried out the demarcation by taking into account the correct *Karu Kaans* of Khasra No.1039, the identity of the subject matter of the partition, i.e. Khasra No.1042, cannot be said to have been correctly established on the spot. He says that in

case the learned District Judge had heard the parties on the application for additional evidence, it would have certainly ordered the appointment of a fresh Local Commissioner for demarcation of Khasra No.1042 by taking into account the correct *Karu Kaans* of Khasra No.1039.

5. It is conceded that the learned District Judge has not disposed of the application, under Order 41 Rule 27 CPC, which the appellants-defendants made for producing the certified copy of the order of the Consolidation Officer whereby he has corrected the *Karu Kaans* of Khasra No.1039. If that is so, the order passed by the learned District Judge cannot be sustained. The same is, therefore, set aside. The matter is remanded to the learned District Judge with the direction to dispose of the application, under Order 41 Rule 27 CPC, and thereafter to render his decision in the main matter. In case the District Judge feels that there is no merit in the application, under Order 41 Rule 27 CPC, he may dispose of the application and the appeal simultaneously. Parties, through their counsel, are directed to appear before the first Appellate Court on 21st December, 2006.

CMP No.749/2005

6. In view of the disposal of the main appeal, this application also stands disposed of and the order dated 29.8.2005 is vacated.

November 21, 2006(sd) **(Surjit Singh), J.**